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3
4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

6 * * *

7 LEZLIE J. GUNN,

8 Plaintiff(s),

Case No. 2:19-CV-2102 JCM (EJY)

9 v.

ORDER

10 CHRISTINE E. DRAGE,

11 Defendant(s).

12
13 Presently before the court is defendant Christine Drage's ("Drage") motion to strike
14 and/or dismiss all causes of action in plaintiff Lezlie Gunn's ("Gunn") complaint. (ECF No. 28).
15 Gunn filed a response (ECF No. 48), to which Drage replied (ECF No. 51).

16 Also before the court is Drage's motion for leave to supplement her motion to strike.
17 (ECF No. 34). Gunn has not filed a response and the time to do so has passed.

18 **I. Background**

19 The present case concerns Drage's alleged interference with a release and settlement
20 agreement ("RSA") between Lezlie Gunn and non-party Dr. Hans Peter Wild ("Wild"). Drage is
21 an attorney who has served as legal counsel for Wild personally, for Wild's companies, and for
22 Gunn personally. (ECF No. 1 at 11). In 2011, Drage specifically represented Wild Affiliated
23 Holdings, Inc., a Nevada corporation owned by Wild. (ECF No. 28 at 4).

24 Gunn and Wild "maintained a close personal and professional relationship" for thirty
25 years, during which time Gunn served as Wild's informal chief business advisor. (ECF No. 1 at
26 11). In late 2015, Gunn and Wild ended their personal and professional relationship and entered
27 into the RSA. *Id.* The RSA required Wild to make payments to Gunn for a variety of expenses
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1 and required Gunn to release Wild from any present or future legal action between Gunn and
2 Wild or his estate. *Id.*

3 According to Gunn, Wild partially performed his obligations but has also breached many
4 financial promises included in the RSA. *Id.* at 12. Gunn alleges that in late 2017, Drage learned
5 of the RSA as she developed a personal relationship with Wild. *Id.* Gunn further alleges that
6 Drage persuaded Wild to breach the RSA for her own financial gain. *Id.*

7 According to Drage, Gunn and Wild continued their relationship until July 2017, at
8 which point the two had a falling out. (ECF No. 28 at 6). This falling out escalated in August
9 2016, when Gunn informed Wild she planned to sue him for his failure to pay her as required by
10 the RSA. (ECF No. 33-5 at 5).

11 Drage alleges that Wild contacted her on October 15, 2016, to inform Drage that he was
12 no longer responsible for paying Gunn's legal fees with Drage's law firm. (ECF No. 28 at 8).
13 Drage further alleges that she informed Wild that she had not been in contact with Gunn, at
14 which point Wild retained Drage and her law firm to represent him concerning future
15 proceedings relating to Gunn. *Id.*

16 Since October 2016, Gunn, Wild, and Drage have been embroiled in a variety of legal
17 disputes, several of which have been heard in this court. *Id.* at 9–10. One such action, *Casun*
18 *Invest, A.G. v. Ponder et al.* was filed in this court on December 16, 2016. Case No. 2:16-cv-
19 02925. According to Drage, Gunn learned of Drage's personal relationship with Wild in October
20 2017, at which point she immediately requested emails between Drage and Wild relating to
21 Gunn through discovery in *Casun*. (ECF No. 28 at 11).

22 In *Casun*, this court ultimately denied Gunn's discovery requests and sanctioned Gunn
23 for overly broad use of discovery. (ECF No. 32-2). Within two months, Gunn initiated the
24 instant suit directly against Drage in California state court, where it was subsequently removed
25 and then transferred to this court. (ECF Nos. 1, 17).

26 Gunn now alleges that Drage used her personal relationship with Wild to intentionally
27 interfere with the RSA. (ECF No. 1 at 13). Gunn further alleges that between one and ten
28 unknown individuals engaged in a civil conspiracy with Drage to intentionally interfere with the

1 RSA. *Id.* at 14. Drage responds by claiming this suit is a strategic lawsuit against public
2 participation, and files a special anti-SLAPP motion to strike each claim against her. (ECF No.
3 28).

4 **II. Legal Standard**

5 **A. Special motion to strike**

6 A strategic lawsuit against public participation, SLAPP for short, is “a meritless suit filed
7 primarily to chill the defendant's exercise of First Amendment rights.” *Bradbury v. Superior*
8 *Court*, 57 Cal. Rptr. 2d 207, 210 (Cal. Ct. App. 1996) (citation omitted).

9 California’s “anti-SLAPP” statute allows defendants to file “[a] cause of action against
10 a person arising from any act of that person in furtherance of the person's right of petition or free
11 speech under the United States or California Constitution in connection with a public issue shall
12 be subject to a special motion to strike” *Mattel, Inc. v. Luce, Forward, Hamilton &*
13 *Scripps*, 121 Cal. Rptr. 2d 794, 799–800 (2002) (quoting Cal. Code Civ. Pro. § 425.16(b)(1)).

14 Anti-SLAPP motions are adjudicated in two stages. “First, the court decides whether the
15 defendant has made a threshold showing that the challenged cause of action is one arising from
16 protected activity.” *Equilon Enters. v. Consumer Cause, Inc.*, 52 P.3d 685, 694 (Cal. 2002).
17 Protected activity includes “any action based on protected speech or petitioning activity as
18 defined in [Cal. Code Civ. Pro § 425.16]” *City of Santa Monica v. Stewart*, 24 Cal. Rptr. 3d
19 72, 95 (Cal. Ct. App. 2005).

20 If the defendant meets its burden, then the court must determine “whether the plaintiff
21 has demonstrated a probability of prevailing on the claim.” Cal. Code Civ. Pro § 425.16(b)(1).
22 “Put another way, the plaintiff ‘must demonstrate that the complaint is both legally sufficient and
23 supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the
24 evidence submitted by the plaintiff is credited.’” *Steed v. Dep’t of Consumer Affairs*, 138 Cal.
25 Rptr. 3d 519, 525 (Cal. Ct. App. 2012) (quoting *Navellier v. Sletten*, 52 P.3d 703, 708 (Cal.
26 2002)).

27 When discussing how to conduct this analysis in *Planned Parenthood Fed’n of Am., Inc.*
28 *v. Ctr. for Med. Progress*, the Ninth Circuit held as follows:

1 Once it is determined that an act in furtherance of protected
2 expression is being challenged, the plaintiff must show a
3 “reasonable probability” of prevailing in its claims for those claims
4 to survive dismissal. To do this, the plaintiff must demonstrate
 that “the complaint is legally sufficient and supported by a prima
 facie showing of facts to sustain a favorable judgment if the
 evidence submitted by the plaintiff is credited.”

5 *Planned Parenthood Fed’n of Am., Inc. v. Ctr. for Med. Progress*, 890 F.3d 828, 833 (9th
6 Cir.), *amended*, 897 F.3d 1224 (9th Cir. 2018), and *cert. denied sub nom. Ctr. for Med. Progress*
7 *v. Planned Parenthood Fed’n of Am.*, 139 S. Ct. 1446 (2019) (citations omitted) (“*Planned*
8 *Parenthood*”).

9 Thus, the court determines applies two different standards depending on the basis of the
10 anti-SLAPP motion. On one hand, “[i]f a defendant makes a special motion to strike based on
11 alleged deficiencies in the plaintiff’s complaint, the motion must be treated in the same manner
12 as a motion under Rule 12(b)(6)” *Id.* at 834. On the other hand, “when an anti-SLAPP
13 motion to strike challenges the factual sufficiency of a claim, then the Federal Rule of Civil
14 Procedure 56 standard will apply.” *Id.*

15 **B. Summary judgement**

16 The Federal Rules of Civil Procedure allow summary judgment when the pleadings,
17 depositions, answers to interrogatories, and admissions on file, together with the affidavits, if
18 any, show that “there is no genuine dispute as to any material fact and the movant is entitled to a
19 judgment as a matter of law.” Fed. R. Civ. P. 56(a). A principal purpose of summary judgment
20 is “to isolate and dispose of factually unsupported claims.” *Celotex Corp. v. Catrett*, 477 U.S.
21 317, 323–24 (1986).

22 For purposes of summary judgment, disputed factual issues should be construed in favor
23 of the nonmoving party. *Lujan v. Nat’l Wildlife Fed.*, 497 U.S. 871, 888 (1990). However, to
24 withstand summary judgment, the nonmoving party must “set forth specific facts showing that
25 there is a genuine issue for trial.” *Id.*

26 In determining summary judgment, a court applies a burden-shifting analysis. “When the
27 party moving for summary judgment would bear the burden of proof at trial, it must come
28 forward with evidence which would entitle it to a directed verdict if the evidence went

1 uncontroverted at trial. In such a case, the moving party has the initial burden of establishing the
2 absence of a genuine issue of fact on each issue material to its case.” *C.A.R. Transp. Brokerage*
3 *Co. v. Darden Rests., Inc.*, 213 F.3d 474, 480 (9th Cir. 2000) (citations omitted).

4 By contrast, when the nonmoving party bears the burden of proving the claim or defense,
5 the moving party can meet its burden in two ways: (1) by presenting evidence to negate an
6 essential element of the nonmoving party’s case; or (2) by demonstrating that the nonmoving
7 party failed to make a showing sufficient to establish an element essential to that party’s case on
8 which that party will bear the burden of proof at trial. *See Celotex Corp.*, 477 U.S. at 323–24. If
9 the moving party fails to meet its initial burden, summary judgment must be denied and the court
10 need not consider the nonmoving party’s evidence. *See Adickes v. S.H. Kress & Co.*, 398 U.S.
11 144, 159–60 (1970).

12 If the moving party satisfies its initial burden, the burden then shifts to the opposing party
13 to establish that a genuine issue of material fact exists. *See Matsushita Elec. Indus. Co. v. Zenith*
14 *Radio Corp.*, 475 U.S. 574, 586 (1986). The opposing party need not establish a dispute of
15 material fact conclusively in its favor. *See T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*,
16 809 F.2d 626, 631 (9th Cir. 1987). It is sufficient that “the claimed factual dispute be shown to
17 require a jury or judge to resolve the parties’ differing versions of the truth at trial.” *Id.*

18 In other words, the nonmoving party cannot avoid summary judgment by relying solely
19 on conclusory allegations that are unsupported by factual data. *See Taylor v. List*, 880 F.2d
20 1040, 1045 (9th Cir. 1989). Instead, the opposition must go beyond the assertions and
21 allegations of the pleadings and set forth specific facts by producing competent evidence that
22 shows a genuine issue for trial. *See Celotex*, 477 U.S. at 324.

23 At summary judgment, a court’s function is not to weigh the evidence and determine the
24 truth, but to determine whether a genuine dispute exists for trial. *See Anderson v. Liberty Lobby,*
25 *Inc.*, 477 U.S. 242, 249 (1986). The evidence of the nonmovant is “to be believed, and all
26 justifiable inferences are to be drawn in his favor.” *Id.* at 255. But if the evidence of the
27 nonmoving party is merely colorable or is not significantly probative, summary judgment may be
28 granted. *See id.* at 249–50.

1 The Ninth Circuit has held that information contained in an inadmissible form may still
2 be considered for summary judgment if the information itself would be admissible at trial.
3 *Fraser v. Goodale*, 342 F.3d 1032, 1036 (9th Cir. 2003) (citing *Block v. City of Los Angeles*, 253
4 F.3d 410, 418–19 (9th Cir. 2001) (“To survive summary judgment, a party does not necessarily
5 have to produce evidence in a form that would be admissible at trial, as long as the party satisfies
6 the requirements of Federal Rules of Civil Procedure 56.”)).

7 **III. Discussion**

8 As an initial matter, the court grants Drage’s unopposed motion for leave to supplement
9 her motion to strike. (ECF No. 34). *See* LR 7-2(d). Further, because the instant suit transferred
10 from a California federal court applying California substantive law, this court reviews the Anti-
11 SLAPP motion under California substantive law.¹ *Ferens v. John Deere Co.*, 494 U.S. 516, 531
12 (1990).

13 Drage challenges the factual sufficiency of Gunn’s complaint. (ECF Nos. 34-4 at 22, 48
14 at 23). Specifically, Drage alleges that Gunn will be unable to prove the elements of her
15 conspiracy claim or her intentional-interference-with-contractual-relations claim. (ECF Nos. 34-
16 4 at 22–24, 51 at 10). Thus, the court applies the summary judgement standard established by
17 Federal Rule of Civil Procedure 56. *See Planned Parenthood*, 890 F.3d at 834.

18 **A. Protected activity**

19 As the moving party, Drage must prove an attorney-client relationship existed with
20 evidence that would entitle Drage to directed verdict if the evidence went uncontroverted at trial.
21 *Darden Rests*, 213 F.3d at 480. Drage argues that all communications between Drage and Wild
22 were protected because Wild retained Drage as legal counsel on October 15, 2016. (ECF No. 28
23 at 8–9). Gunn argues that Drage’s activity is not protected because Drage cannot prove an
24 attorney-client relationship existed between Drage and Wild. (ECF No. 48 at 4–9).

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27 ¹ Gunn also brings her anti-SLAPP motion pursuant to Nevada law. (*See* ECF No. 28).
28 Notably, Nevada and California’s anti-SLAPP jurisprudence are functionally equivalent to one
another. *See Nev. Rev. Stat. §§ 41.637, 41.660, 41.665; Pope v. Fellhauer*, 437 P.3d 171 (Nev.
2019).

1 Drage provides a single citation to her own December 27, 2019, declaration to support
2 her claim that Wild retained Drage as an attorney. (ECF No. 28 at 8–9). In her declaration,
3 Drage provides that “[a]fter Dr. Wild learned that I had not been in contact with Gunn, Dr. Wild
4 retained W&D and I as legal counsel to provide legal services . . . relating to Gunn.” (ECF No.
5 29-1 at 4).

6 This evidence may be admissible should Drage take the stand at trial, but it is completely
7 contradicted by all other evidence provided by the parties. For instance, while Drage alleges that
8 Wild retained her law firm, “W&D,” Gunn provides declarations from Jean Weil, founder of
9 W&D, and Jay Weil, former chief financial officer of W&D, which indicate that neither
10 individual ever saw paperwork indicating that Wild retained their law firm in 2016 or beyond.
11 (ECF Nos. 48-1, 48-2).

12 Drage’s attached exhibits do little to bolster her claim. Drage claims that she and Wild
13 were engaged in a professional and romantic relationship. (ECF No. 28 at 10). However, in a
14 March 21, 2019, deposition, Wild indicated that he did not have a female lawyer. (ECF No. 29-6
15 at 4). Instead, Wild indicated that he engaged solely in a romantic relationship with Drage. *Id.*
16 at 5. Further, while Drage claims Wild retained her and her firm, she provides no retainer
17 agreement or other evidence showing any kind of legal agreement between her and Wild.

18 This conflicting evidence establishes a genuine issue of material fact. Thus, Drage’s
19 contention that her attorney-client privilege necessarily makes her conduct protected activity
20 fails.

21 Yet, Drage need not establish an attorney-client relationship to prove that her conduct is
22 protected. Under California Code of Civil Procedure § 425.16, communications that are
23 “preparatory to or in anticipation of bringing of an action or other official proceeding” are
24 protected conduct. *Briggs v. Eden Council for Hope & Opportunity*, 969 P.2d 564, 569 (Cal.
25 1999); *see also Bel Air Internet, LLC v. Morales*, 230 Cal. Rptr. 3d 71, 83 (Cal. Ct. App. 2018);
26 *Neville v. Chudacoff*, 73 Cal. Rptr. 3d 383, 393 (Cal. Ct. App. 2008). Conduct preparatory to
27 litigation includes counseling or encouraging others to engage in litigation. *Bel Air Internet*, 230
28 Cal. Rptr. 3d at 83. Similarly, a lawyer’s specific advice to a prospective client on potential

1 litigation is protected conduct. *Taheri Law Grp. v. Evans*, 72 Cal. Rptr. 3d 847, 855 (Cal. Ct.
2 App. 2008).

3 Communications preparatory to litigation are protected if litigation was already
4 “contemplated in good faith and under serious consideration” when the communications were
5 made. *Neville*, 73 Cal. Rptr. 3d at 393 (quoting *Rhode v. Wolf*, 64 Cal. Rptr. 3d 348, 354 (Cal.
6 Ct. App. 2007)). However, litigation need only be contemplated by the petitioning party, not by
7 the recipient of the communication. *Bel Air Internet*, 230 Cal. Rptr. 3d 71, 86–87.

8 Here, assuming *arguendo* that Drage’s conduct rises to the level of intentional
9 interference, Drage’s communications are still that of an attorney with a prospective client
10 regarding potential litigation.² Accordingly, Drage’s communications to Wild relating to
11 potential litigation regarding the RSA are within the category of “statements made in connection
12 with or in preparation of litigation.” *Kolar v. Donahue, McIntosh & Hammerton*, 52 Cal. Rptr.
13 3d 712, 716 (Cal. Ct. App. 2006); *see Taheri Law Grp. v. Evans*, 72 Cal. Rptr. 3d 847, 852–53
14 (Cal. Ct. App. 2008).

15 Accordingly, Drage’s communications are protected so long as Drage contemplated
16 litigation in good faith when the communications occurred. *See Taheri Law Group*, 72 Cal.
17 Rptr. 3d at 853–54. To that point, Drage provides declarations from herself and a third party,
18 George Naegeli, supporting her claim that Wild was contemplating in good faith a lawsuit
19 against Gunn surrounding the RSA. (ECF Nos. 29-1, 29-7).

20 Wild’s contemplation is further supported by Gunn telling Wild in August 2016, that she
21 planned to sue Wild over terms of the RSA. (ECF No. 33-5 at 5). This information indicates
22 that Wild anticipated litigation when he reached out to Drage just two months later to clarify he
23 would no longer pay Gunn’s legal fees. (ECF No. 29-4).

24 Drage indicates that she had no knowledge of the RSA before Wild reached out to her in
25 2016. (ECF No. 28 at 8). Any communications between Wild and Drage regarding the RSA
26 were thus necessarily driven by Wild’s anticipation of litigation. Accordingly, Drage’s alleged

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28 ² If Drage cannot be said to be Wild’s attorney for attorney-client privilege purposes, her
legal advice to a non-lawyer certainly constitutes communications with a potential client
concerning potential litigation.

1 advice for Wild to breach the RSA occurred as a part of Drage's serious consideration of
2 potential litigation. Therefore, Drage's alleged communications are protected conduct. *See*
3 *Taheri Law Group*, 72 Cal. Rptr. 3d at 853–54.

4 Thus, Drage meets her burden to show her conduct is protected. The court now turns to
5 whether Gunn shows a reasonable probability she will prevail on her claims.

6 **B. Probability of prevailing on the claim**

7 *1. Civil conspiracy to interfere with a contract*

8 Alone, a civil conspiracy does no harm and carries no liability. *Applied Equip. Corp. v.*
9 *Litton Saudi Arabia Ltd.*, 869 P.2d 454, 457 (Cal. 1994). To be actionable, a civil conspiracy
10 must be accompanied by an actual tort. *Id.* Thus, under California law, the elements of civil
11 conspiracy are: (1) the formation of the conspiracy, (2) the operation of the conspiracy, and (3)
12 damage to plaintiff from an act or acts done in furtherance of the conspiracy. *Id.*

13 Here, Gunn provides no evidence that there was, in fact, a conspiracy. Instead, Gunn's
14 complaint simply alleges that Gunn believes between one and ten individuals engaged in a civil
15 conspiracy to interfere with Gunn's contractual rights. (ECF No. 1 at 14). In response to
16 Drage's special motion to dismiss, Gunn does not even mention the word "conspiracy," let alone
17 attempt to prove any of the claim's elements. (ECF No. 48). Further, Gunn has yet to provide
18 evidence pointing to the identity of any of the ten "Does" included in her complaint.

19 Thus, Gunn is does not show a reasonable probability she will prevail on her civil
20 conspiracy claim and the court dismisses the claim accordingly.

21 *2. Intentional-interference-with-contractual-relations claim*

22 Under California law, a claim for intentional interference with a contract requires the
23 plaintiff to prove: "(1) a valid contract between plaintiff and a third party; (2) defendant's
24 knowledge of this contract; (3) defendant's intentional acts designed to induce a breach or
25 disruption of the contractual relationship; (4) actual breach or disruption of the contractual
26 relationship; and (5) resulting damage." *Pacific Gas & Electric Co. v. Bear Stearns & Co.*, 791
27 P.2d 587, 590 (Cal. 1990).

1 Although the parties do not dispute that the RSA was a valid contract between Gunn and
2 Wild, (*see* ECF Nos. 28, 48), Drage argues that Gunn is unable to prove any of the remaining
3 elements. (ECF No. 51 at 10).

4 As to element two, Drage does not deny that she knew of the RSA when she
5 communicated with Wild in 2016. (ECF No. 28 at 8). In fact, Drage claims that Wild hired her
6 to represent her in litigation surrounding the RSA. *Id.* Thus, the second element is met. As to
7 element four, Gunn provides evidence that Wild did not pay her in accordance with the RSA.
8 (ECF No. 48-1 at 12). Wild's failure to make payments in accordance with the RSA is an actual
9 breach, which satisfies the fourth element. (ECF No. 1 at 17). As to the fifth element, Gunn
10 provides evidence that she has suffered financial damage due to Wild's breach. (ECF No. 48 at
11 11).

12 The central issue is whether Gunn shows a reasonable probability she will prove element
13 three, that Drage intentionally acted to induce a breach of the RSA. Drage argues that element
14 three contains a "but for" causation requirement, placing the burden on Gunn to prove that but
15 for Drage's conduct, Wild would have never breached the RSA. (ECF No. 28 at 24).

16 "It has been repeatedly held that a plaintiff, seeking to hold one liable for unjustifiably
17 inducing another to breach a contract, must allege [and prove] that the contract would otherwise
18 have been performed" *Hahn v. Diaz-Barba*, 125 Cal. Rptr. 3d 242, 258 (Cal. Ct. App.
19 2011) (quoting *Dryden v. Tri-Valley Growers*, 135 Cal. Rptr. 720, 725 (Cal. Ct. App. 1977)).
20 Further, intentional interference does not require that the defendant's primary purpose be to
21 disrupt the contract, it is enough that she knows interference is substantially certain as a result of
22 her action. *Quelimane Co. v. Stewart Title Guaranty Co.*, 960 P.2d 513, 531 (Cal. 1998).

23 To prove element three, Gunn alleges that she received information from Ben Schroeder,
24 a banker with UBS who managed accounts for Wild. (ECF No. 48 at 10). According to Gunn,
25 Schroeder informed her on three separate occasions that Drage leveraged her personal
26 relationship with Wild to interfere with the RSA. *Id.* Specifically, Gunn alleges that Schroeder
27 informed her that "Wild's girlfriend, who Mr. Schroeder described as an attorney, had persuaded
28 Wild to not fulfill his obligation under the RSA." *Id.*

1 In support of these allegations, Gunn cites solely to her own declaration. (ECF No. 48-1
2 at 10–13). While the court may consider information in an inadmissible form under summary
3 judgment standard analysis, the information within that evidence must be admissible at trial. *See*
4 *Fraser*, 342 F.3d at 1036. To that point, Drage has already challenged Schroeder’s statements in
5 Gunn’s declaration and response as hearsay. (ECF No. 51 at 10).

6 “[W]hether the evidence presents a sufficient disagreement to require submission to a
7 jury or whether it is so one-sided that one party must prevail as a matter of law.” *Anderson v.*
8 *Liberty Lobby, Inc.*, 477 U.S. 242, 251–52 (1986). To survive a motion for summary judgment,
9 Gunn “must do more than simply show that there is some metaphysical doubt as to the material
10 facts.” *Orr v. Bank of Am., NT & SA*, 285 F.3d 764, 783 (9th Cir. 2002) (quoting *Matsushita*
11 *Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986)). Thus, “[t]he mere existence of a
12 scintilla of evidence in support of the plaintiff’s position will be insufficient; there must be
13 evidence on which the jury could reasonably find for the plaintiff.” *Anderson*, 477 U.S. at 252.

14 Here, Gunn states that she was “informed” of Wild’s girlfriend and her alleged
15 inducement by Dr. Schroeder. (ECF No. 48 at 10). Gunn does not claim that she received
16 information from any other source that led her to believe Drage intentionally interfered with the
17 RSA. Gunn provides no declaration from Schroeder, no indication that Schroeder will be called
18 as a witness, and no non-hearsay proof that he made these statements at all. Instead, Gunn’s
19 entire claim rests on her own declaration. (ECF No. 48-1 at 10–13).

20 As Schroeder’s communications are statements made out of court, and Gunn intends to
21 use them for the truth of the matter asserted—that Wild’s girlfriend, who was an attorney,
22 induced Wild’s breach of the RSA—the statements are hearsay. Fed. R. Evid. 801. There are, of
23 course, several exceptions to the hearsay rule of evidence. *See generally* Fed. R. Evid. 803, 804,
24 807. However, Gunn does not argue that Schroeder’s statements fall within any exception.

25 Nor is there any indication that Schroeder’s testimony would be admissible at trial. Gunn
26 provides that “[a]ccording to Mr. Schroeder, Mr. Wild’s girlfriend . . . was the catalyst behind
27 Mr. Wild’s decision to breach the RSA.” (ECF No. 48-1 at 12). Yet, Gunn fails to provide any
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1 information as to how or why Schroeder developed this opinion³ and thus fails to provide
2 anything which leads the court to believe the information would be admissible at trial.

3 Given the evidence before the court, there is no reasonable probability that Schroeder's
4 statements will be admissible as evidence at trial. Without Schroeder's statements made to
5 Gunn, there is no evidence that Drage intentionally acted to interfere with the RSA, nor is there
6 evidence that Wild wouldn't have breached the RSA but for Drage's conduct.

7 To the contrary, there is evidence from Gunn herself that Drage's interference could not
8 have caused Wild's breach. In Gunn's complaint in yet another action concerning Wild, she
9 alleges that Wild breached the RSA several times before June 2016, four months before Drage
10 and Wild contacted each other.⁴ (ECF No. 33-7 at 6). Gunn's own contradictory timeline fatally
11 undermines the already limited evidence in favor of Gunn's claim that Drage intended to induce
12 Wild into breaching the RSA where he otherwise would not have.

13 At best, Gunn has provided a mere scintilla of evidence that does little more than show
14 some metaphysical doubt as to the material facts, which is insufficient to survive the anti-SLAPP
15 motion. *See Anderson*, 477 U.S. at 252. Accordingly, there is no genuine dispute of material
16 fact as to element three and Gunn does not show a reasonable probability of succeeding on her
17 claim.

18 Thus, Gunn's intentional-interference-with-contractual-relations claim is dismissed.

19 **IV. Conclusion**

20 Accordingly,

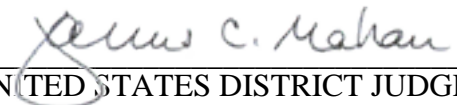
21 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that Christine Drage's
22 motion for leave to supplement her motion to strike (ECF No. 34) be, and the same hereby is,
23 GRANTED.

26 ³ If Schroeder developed his belief through his own observations and nothing more, his
27 testimony would be speculative. If Schroeder developed his belief through Mr. Wild's
statements to him, but Mr. Wild is unavailable to testify, his testimony is still hearsay.

28 ⁴ Unlike Schroeder's statements, Drage may admit Gunn's prior statements at trial under
Fed. R. Evid. 801(d)(2).

1 IT IS FURTHER ORDERED that Drage's motion to strike (ECF No. 28) be, and the
2 same hereby is, GRANTED.

3 DATED April 10, 2020.

4 
5 UNITED STATES DISTRICT JUDGE
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